

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO

|                    |   |                              |
|--------------------|---|------------------------------|
| JOHN SEAY,         | ) | CASE NO. 5:08 CV 980         |
|                    | ) |                              |
| Petitioner,        | ) | JUDGE DONALD C. NUGENT       |
|                    | ) |                              |
| v.                 | ) |                              |
|                    | ) | <u>MEMORANDUM OF OPINION</u> |
| JACQUELINE THOMAS, | ) | <u>AND ORDER</u>             |
|                    | ) |                              |
| Respondent.        | ) |                              |

On April 16, 2008, petitioner pro se John Seay filed the above-captioned petition for writ of habeas corpus under 28 U.S.C. § 2254. Seay is incarcerated at the North Coast Correctional Treatment Facility, having been convicted, pursuant to a guilty plea, of "two counts of trafficking and two counts of possession." For the reasons stated below, the petition is denied and this action is dismissed.

A federal court may entertain a habeas petition filed by a person in state custody only on the ground that he is in custody in violation of the Constitution, laws, or treaties of the United States. 28 U.S.C. § 2254(a). In addition, petitioner must have exhausted all available state remedies. 28 U.S.C. § 2254(b).

It is evident on the face of the petition that Seay has yet to exhaust his state court remedies, as there is no indication

he has pursued a direct appeal.<sup>1</sup> The petition is thus premature.<sup>2</sup>

Accordingly, the request to proceed in forma pauperis is granted and this action is dismissed without prejudice pursuant to Rule 4 of the Rules Governing Section 2254 Cases. Further, the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith, and that there is no basis on which to issue a certificate of appealability. Fed.R.App.P. 22(b); 28 U.S.C. § 2253.

IT IS SO ORDERED.

  
DONALD C. NUGENT  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Seay's state habeas action is facially insufficient for purposes of exhaustion, as such an action may be pursued solely to challenge basic jurisdiction of the trial court. Ohio Rev.Code § 2725.05.

<sup>2</sup> The court expresses no opinion concerning whether or not petitioner may now have procedurally defaulted in the state court.